



**THE ATTORNEY GENERAL
OF TEXAS**

JOHN BEN SHEPPERD
ATTORNEY GENERAL

AUSTIN 11, TEXAS

July 10, 1953

Hon. C. H. Cavness
State Auditor
State Capitol
Austin, Texas

Opinion No. S-67

Re: The legality of counting,
for public junior college
apportionment purposes,
semester hours taken by
non-resident military per-
sonnel enrolled in the col-
leges at resident tuition
rate, part of their tuition
being paid by the U.S. govern-
ment.

Dear Sir:

You have asked for the opinion of this office concerning the legality of counting, for public junior college apportionment purposes, semester hours taken by non-resident military personnel enrolled in the colleges at resident tuition rates, part of their tuition being paid by the U. S. Government.

You state in your letter that certain of the Public Junior Colleges have in effect contracts with the United States Armed Forces whereby a portion of the tuition required is paid by the military undergraduate student and the remainder is paid by the Government.

Article IV, Chapter 81, Acts of the 53rd Legislature, 1953 (commonly called the 1953 Appropriation Act) reads in part, at page 306 et seq.:

"Sec. 3. It is further provided that to be eligible for and to receive a proportionate share of this appropriation, a Public Junior College shall:

"(a) Prior to November 1st of each year, collect in full as tuition from each enrolled student. . . the amounts set as such by the respective governing boards. . . provided

further that valid contracts with the United States Government for instruction of undergraduate military personnel may be considered as collections subject to adjustment after final payments thereof.

"Sec. 4. (b) . . . Semester hours to be counted for each Public Junior College shall not include . . . those hours being carried by any student receiving the benefits of U. S. Public Laws Nos. 346 or 16, 78th Congress. . . ."

It is evident that students in the military service may have their hours counted in determining the amount of aid the public junior college is to receive from the State. Section 3 (a), supra, expressly includes government military contracts and the students covered thereby. The 1951 Appropriation Act (Chapter 499, Acts of the 52nd Legislature, 1951, page 1228) excluded from the semester hours count "any student whose tuition and fee expenses are paid by the United States Government." Att'y Gen. Op. S-17 (1953). The 1953 Appropriation Act is worded differently, excluding only the semester hours "carried by any student receiving the benefit of U. S. Public Laws Nos. 346 or 16, 78th Congress."

House Bill No. 437, Acts of the 53rd Legislature, 1953, amends Subsection 6 of Section 1 of Article 2654c, Vernon's Civil Statutes, so as to permit all members of the Armed Forces stationed in Texas to attend state institutions of higher learning by paying regular resident tuition charges. Section 3 of House Bill 437 reads:

"Provided that the terms of this Act shall not be applicable to students, their husbands or wives as the case may be, who are in attendance at institutions of higher learning under contractual arrangements between said institutions and the Armed Forces of the United States, as described in Section 6 hereof, whereby the student's tuition is paid by the said Armed Forces."
(Emphasis added)

Consequently, a non-resident military student whose tuition is paid in part under contract between the United States Armed Forces and a public junior college is obligated to pay the non-resident tuition charges specified in Subsection 2 of Section 1 of Article 2654c, Vernon's Civil Statutes.

SUMMARY

In determining the apportionment to which it is entitled a public junior college may count the semester hours carried by a military undergraduate, except those receiving benefits under U. S. Public Laws Nos. 346 or 16, 78th Congress.

A military undergraduate who is a non-resident of the State of Texas must pay non-resident tuition if his tuition is paid in part by the United States Armed Forces pursuant to a contract with the institution.

Yours very truly,

APPROVED:

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